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BEFORE THE ARIZONA CORPORATION COMMISSION

2009 FEB 19 P 4: 12

COMMISSIONERS

KRISTIN K. MAYES, Chairman
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BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, LLC, DBA
JOHNSON UTILITIES COMPANY FOR AN
INCREASE IN ITS WATER AND
WASTEWATER RATES FOR CUSTOMERS
WITHIN PINAL COUNTY, ARIZONA.

DOCKET NO. WS-02987A-08-0180

**JOHNSON UTILITIES' MOTION
TO COMPEL DISCOVERY**

*(Expedited Oral Argument and Ruling
Requested)*

Pursuant to A.A.C. R14-2-106.K and Rule 37 of the Arizona Rules of Civil Procedure, Johnson Utilities, LLC, dba Johnson Utilities Company ("Johnson Utilities" or the "Company") hereby moves for an order from the Arizona Corporation Commission ("Commission") compelling Intervenor Swing First Golf, LLC, ("SFG") to provide responses to the Company's First and Second Sets of Data Requests propounded to SFG in the above-captioned matter (the "Motion to Compel").

Contemporaneous with this motion, Johnson Utilities is filing a Motion to Strike the Direct Testimony of David Ashton ("Motion to Strike"). If the Motion to Strike is granted, it would significantly reduce the number of data requests that must be addressed. However, because Johnson Utilities must file its rebuttal testimony by March 6, 2009, which is only 15 days away, the Company must proceed with this Motion to Compel in the event that the Motion to Strike is not granted prior to the March 6, 2009, rebuttal testimony deadline. Accordingly, Johnson Utilities seeks an expedited ruling on this Motion to Compel Discovery, as well as on the Motion to Strike.

Arizona Corporation Commission

DOCKETED

FEB 19 2009

DOCKETED BY

MM

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
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1 **I. BACKGROUND**

2 In anticipation of Johnson Utilities' March 6, 2009, deadline for filing its rebuttal
3 testimony, and pursuant to the August 15, 2008, Rate Case Procedural Order ("PO"),
4 Johnson Utilities issued its First Set of Data Requests to SFG on January 27, 2009. A
5 copy of those data requests is attached hereto as Attachment A. The Company requested
6 that SFG provide its responses to the First Set of Data Requests on or before February 6,
7 2009, ten days from the date of the data requests. On February 3, 2009, SFG filed the
8 Direct Testimony of David Ashton (the "Ashton Testimony"). Because of the numerous
9 allegations, conclusions and recommendations contained in the Ashton Testimony, and
10 because of the Company's need to address such allegations, conclusions and
11 recommendations in its March 6, 2009, rebuttal testimony, Johnson Utilities propounded
12 a Second Set of Data Requests to SFG on February 6, 2009. A copy of those data
13 requests is attached hereto as Attachment B. The Company requested that SFG provide
14 its responses to the Second Set of Data Requests on or before February 16, 2009, ten days
15 from the date of the data requests.

16 SFG has not objected to any of the data requests contained in the first or second
17 sets, nor has it provided any responses. Despite communications between counsel for
18 Johnson Utilities and counsel for SFG regarding the data requests, SFG has been
19 unwilling to provide responses in a timely manner, or even to state when SFG could
20 provide responses to the data requests. With the March 6, 2009, deadline for rebuttal
21 testimony approaching, Johnson Utilities could not afford to wait any longer.

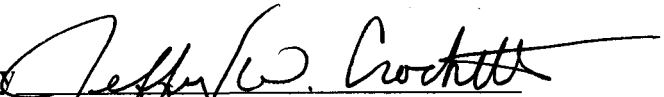
22 **II. REQUESTED RELIEF**

23 In light of the March 6, 2009, deadline for Johnson Utilities' rebuttal testimony,
24 the Company requests that SFG be ordered to provide its responses to Johnson Utilities'
25 First and Second Sets of Data Requests as expeditiously as possible, but in no event later
26 than February 27, 2009, which is seven (7) days prior to the Company's rebuttal

1 testimony deadline. Johnson Utilities further requests that if SFG does not provide its
2 responses in compliance with the deadline, that the direct testimony of David Ashton be
3 stricken.

4 RESPECTFULLY SUBMITTED this 19th of February, 2009.

5 SNELL & WILMER L.L.P.

6
7
8 By 

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10 Bradley S. Carroll
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15 ORIGINAL and 13 copies filed this
16 19th day of February, 2009, with:

17 Docket Control
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington Street
20 Phoenix, Arizona 85004

21 COPIES of the foregoing hand-delivered this
22 19th day of February, 2009, to:

23 Teena Wolfe, Administrative Law Judge
24 Hearing Division
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26 1200 W. Washington Street
Phoenix, Arizona 85007

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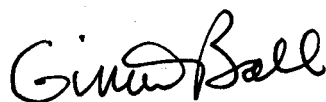
1 Ernest Johnson, Director
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6 COPIES of the foregoing sent via e-mail and
7 U.S. mail this 19th day of February, 2009, to:

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23
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26


9534938.2

ATTACHMENT A

**JOHNSON UTILITIES' FIRST SET OF DATA REQUESTS
TO SWING FIRST GOLF, LLC
DOCKET WS-02987A-08-0180
JANUARY 27, 2009
(RATE CASE)**

JU 1.1

In the Motion to Compel ("Motion") filed by Swing First Golf ("SFG") on November 21, 2008, SFG described its expected testimony in this rate case. With regard to SFG's expected testimony, please answer the following data requests:

- (a) In Section I(C)(1)(1) of the Motion at page 8, SFG states that Johnson Utilities should be required to fund an independent audit of the books of Johnson Utilities and Johnson International over at least the last five years. In Section I(C)(1)(3) of the Motion, SFG further states that no wastewater rate increase should be allowed until the independent audit of the books of Johnson Utilities and Johnson International has been completed and the Commission has been able to evaluate the results of the audit. With regard to the foregoing statements, please answer the following data requests:
 - (i) Please identify (by decision number and docket number) each decision of which SFG is aware in which the Arizona Corporation Commission has ordered a utility company to fund an independent audit of its own books or the books of an affiliate of the utility company.
 - (ii) Please identify (by decision number and docket number) each decision of which SFG is aware in which the Arizona Corporation Commission has delayed or prohibited an increase in a utility's rates pending the outcome of an audit such as that proposed by SFG.
- (b) In Section I(C)(1)(2) of the Motion at page 8, SFG states that an independent audit should be conducted at the expense of Johnson Utilities to determine whether Johnson Utilities is a fit and proper entity to continue to hold a certificate of convenience and necessity ("CC&N"). In Section I(C)(1)(3) of the Motion, SFG further states that no wastewater rate increase should be allowed until the "fit and proper" audit of Johnson Utilities has been completed and the Commission has been able to evaluate the results of the audit. With regard to the foregoing statements, please answer the following data requests:
 - (i) Please identify (by decision number and docket number) each decision of which SFG is aware in which the Arizona Corporation Commission has ordered an audit to determine whether a utility company is a "fit and proper" entity to hold a CC&N.
 - (ii) Please identify (by decision number and docket number) each decision of which SFG is aware in which the Arizona Corporation

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Commission has delayed or prohibited an increase in a utility's rates pending the outcome of a "fit and proper" audit such as that proposed by SFG.

- (c) With regard to Section I(C)(1)(2)(b) of the Motion at page 8, please identify all evidence (including documents) in the possession of SFG of Johnson Utilities' alleged "continual discharges of raw sewage into the Queen Creek Wash." Also, please provide the dates of each alleged discharge of raw sewage into Queen Creek Wash.
- (d) With regard to Section I(C)(1)(2)(c) of the Motion at page 8, please identify all evidence (including documents) in the possession of SFG of Johnson Utilities' alleged "illegal storage of sewage sludge on site."
- (e) With regard to Section I(C)(1)(2)(d) of the Motion at page 8, please identify all evidence (including documents) in the possession of SFG of Johnson Utilities' alleged "harassment of customers through defamation lawsuits." Also, please identify by name each customer of Johnson Utilities who is the subject of a defamation lawsuit filed by Johnson Utilities.
- (f) With regard to Section I(C)(1)(2)(e) of the Motion at page 8, please identify all evidence (including documents) in the possession of SFG of Johnson Utilities' alleged "other customer service issues." Please identify with specificity each "customer service issue" known to SFG.
- (g) With regard to Section I(C)(1)(2)(f) of the Motion at page 8, please identify all evidence (including documents) in the possession of SFG of Johnson Utilities' alleged "continual disregard of Commission statutes, rules, and orders."
- (h) With regard to Section I(C)(1)(2)(g) of the Motion at page 8, please identify all evidence (including documents) in the possession of SFG of Johnson Utilities' alleged "provision of free water to its affiliates."

JU 1.2

With regard to Section I(C)(1)(4) of the Motion to Compel ("Motion") at page 8, Swing First Golf ("SFG") states that Johnson Utilities should be "fined for its blatant disregard of its public service obligations, environmental laws, and explicit Commission statutes, rules, and orders." With regard to this statement, please answer the following data requests:

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- (a) Please identify each public service obligation that has been disregarded by Johnson Utilities.
- (b) Please identify each environmental law that has been disregarded by Johnson Utilities.
- (c) Please identify each Arizona Corporation Commission statute, rule or order that has been disregarded by Johnson Utilities.

JU 1.3 With regard to Section I(C)(1)(5) of the Motion to Compel ("Motion") at page 9, Swing First Golf ("SFG") states that Johnson Utilities' "authorized return on equity should be reduced to further penalize it for its blatant disregard of its public service obligations, environmental laws, and explicit Commission statutes, rules, and orders." With regard to this statement, please answer the following data requests:

- (a) What is Johnson Utilities' authorized return on equity?
- (b) Please identify by number and docket number the decision of the Arizona Corporation Commission which sets an authorized return on equity for Johnson Utilities.
- (c) Please identify (by decision number and docket number) each decision of which SFG is aware in which the Arizona Corporation Commission has reduced a utility's authorized return on equity as a penalty.

JU 1.4 With regard to Section I(C)(1)(6) of the Motion to Compel ("Motion") at page 9, Swing First Golf ("SFG") states that Johnson Utilities "should immediately reduce its water rates to the level proposed in its direct testimony, after giving effect to the return-on-equity reduction." With regard to this statement, please answer the following data requests:

- (a) Please identify (by decision number and docket number) each decision of which SFG is aware in which a utility has unilaterally reduced its rates without the approval of the Arizona Corporation Commission.
- (b) What is a "return-on-equity reduction?"
- (c) Please identify (by decision number and docket number) each decision of which SFG is aware in which the Arizona Corporation Commission has ordered or discussed a "return-on-equity reduction."

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- JU 1.5 Is it the position of Swing First Golf that the ability of a customer to store effluent provides a benefit to Johnson Utilities?
- (a) If the answer to this data request is yes, please describe the benefit to Johnson Utilities.
- (b) If the answer to this data request is yes, has Swing First Golf quantified the benefit in monetary terms? If so, what is the monetary value of the benefit to Johnson Utilities?
- JU 1.6 Has Swing First Golf calculated a rate for effluent to be charged by Johnson Utilities?
- (a) If the answer to this data request is yes, what is the rate that has been calculated by Swing First Golf?
- (b) If the answer to this data request is yes, please provide copies of all work papers supporting Swing First Golf's calculated rate for effluent.
- JU 1.7 Has Swing First Golf calculated a cost of capital for Johnson Utilities?
- (a) If the answer to this data request is yes, what is the cost of capital calculated by Swing First Golf?
- (b) If the answer to this data request is yes, please provide copies of all work papers pertaining to Swing First Golf's calculated cost of capital.
- JU 1.8 Please identify each person that Swing First Golf intends to call as a witness in the rate case, including but not limited to, any expert witness.
- JU 1.9 Please provide a copy of each document that is identified by Swing First Golf in any response to these data requests.
- JU 1.10 Please provide a copy of each data request that Swing First Golf has received from any party in this rate case.
- JU 1.11 Please provide a copy of each response of Swing First Golf to any data request received from any party in this rate case.

ATTACHMENT B

**JOHNSON UTILITIES' SECOND SET OF DATA REQUESTS
TO SWING FIRST GOLF, LLC
DOCKET WS-02987A-08-0180
FEBRUARY 6, 2009
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- JU 2.1 Please identify by docket number any case in which David Ashton has provided testimony before the Arizona Corporation Commission?
- JU 2.2 Has David Ashton previously provided testimony in any legal proceeding in any court of law or before any regulatory body? If so, please provide the case number, case caption and the date that Mr. Ashton provided testimony.
- JU 2.3 Please describe David Ashton's job duties for Swing First Golf, LLC.
- JU 2.4 Please describe David Ashton's job duties for KDS.
- JU 2.5 Please describe David Ashton's job duties for Reactivity, Inc.
- JU 2.6 Please describe David Ashton's job duties for Cyclone Commerce.
- JU 2.7 On pages 2-3 of his Direct Testimony, David Ashton discusses a recent civil settlement of a lawsuit involving George Johnson and certain of his companies. With regard to the lawsuit and settlement, please answer the following questions:
- (a) Was Johnson Utilities a party to the referenced lawsuit?
 - (b) Was Johnson Utilities a party to the referenced settlement?
 - (c) Has the referenced settlement impacted rate payers of Johnson Utilities?
 - (d) If the answer to subpart (c) above is yes, describe how the referenced settlement has impacted rate payers of Johnson Utilities, including a quantification of any financial harm to rate payers.
 - (e) Does Mr. Ashton have direct personal knowledge regarding the facts and circumstances of the referenced lawsuit?
 - (f) If the answer to subpart (e) above is yes, please describe how Mr. Ashton obtained direct personal knowledge regarding the facts and circumstances of the referenced lawsuit.
 - (g) How did Mr. Ashton obtain a copy of the ADEQ News Release attached as Exhibit DA-1 to his Direct Testimony?
 - (h) Describe any steps taken by Mr. Ashton to independently verify any of the statements or information contained in the ADEQ News Release attached as Exhibit DA-1 to his Direct Testimony.

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JU 2.8 On page 3 of his Direct Testimony (lines 22-23), David Ashton testifies that “George Johnson and the other defendants agreed to pay a fine of 12.1 million dollars – the largest civil environmental settlement in Arizona history.” With regard to this statement, please answer the following questions:

- (a) Describe how Mr. Ashton determined that the fine was the “largest civil settlement in Arizona history.”
- (b) Was Johnson Utilities responsible for paying the fine or any portion of the fine?

JU 2.9 On page 3 of his Direct Testimony (lines 28-32), David Ashton references a February 2008 article from Phoenix Magazine, a copy of which is attached as Exhibit DA-2 to his testimony. With regard to this article, please answer the following questions:

- (a) Describe any steps taken by Mr. Ashton to independently verify any of the statements contained in the Phoenix Magazine article.
- (b) Did any of the alleged activities discussed in the Phoenix Magazine article and identified by Mr. Ashton in his Direct Testimony impact rate payers of Johnson Utilities?
- (c) If the answer to subpart (b) above is yes, describe how the alleged activities discussed in the article impacted rate payers of Johnson Utilities, including a quantification of any financial harm to rate payers.
- (d) Does Mr. Ashton have direct personal knowledge regarding the alleged activities described in the Phoenix Magazine article?
- (e) If the answer to subpart (d) above is yes, please describe how Mr. Ashton obtained direct personal knowledge regarding the alleged activities described in the Phoenix Magazine article.
- (f) How did Mr. Ashton obtain a copy of the article attached as Exhibit DA-2 to his Direct Testimony?
- (g) Describe any steps taken by Mr. Ashton to independently verify any of the statements or information contained in the Phoenix Magazine article attached as Exhibit DA-2 to his Direct Testimony.

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JU 2.10 On page 4 of his Direct Testimony (lines 3-10), David Ashton discusses a lawsuit by the United States Environmental Protection Agency ("EPA") and penalty. With regard to the lawsuit and penalty, please answer the following questions:

- (a) Was Johnson Utilities a party to the referenced lawsuit?
- (b) Did the referenced lawsuit result in a penalty being assessed against or paid by Johnson Utilities?
- (c) Did the referenced lawsuit impact rate payers of Johnson Utilities?
- (d) If the answer to subpart (c) above is yes, describe how the referenced lawsuit impacted rate payers of Johnson Utilities, including a quantification of any financial harm to rate payers.
- (e) Does Mr. Ashton have direct personal knowledge regarding the facts and circumstances of the referenced lawsuit?
- (f) If the answer to subpart (e) above is yes, please describe how Mr. Ashton obtained direct personal knowledge regarding the facts and circumstances of the referenced lawsuit.
- (g) How did Mr. Ashton obtain a copy of the document attached as Exhibit DA-3 to his Direct Testimony?
- (h) Describe any steps taken by Mr. Ashton to independently verify any of the statements or information contained in the document attached as Exhibit DA-3 to his Direct Testimony.

JU 2.11 On page 4 of his Direct Testimony (lines 19-20), David Ashton states: "I was warned by several people that Mr. Johnson was difficult to do business with." With regard to this testimony, please answer the following questions:

- (a) Identify each person who warned Mr. Ashton regarding Mr. Johnson as described in the testimony, and for each such person, provide the following information:
 - (i) the date and place the warning took place;
 - (ii) a summary of the warning that was given; and
 - (iii) the name of any person who was present and witnessed the warning being given.

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JU 2.12 On page 4 of his Direct Testimony (lines 24-25), David Ashton states: "Mr. Johnson has used his Utility to try to both overcharge Swing First and to cheat us out of money he owes us." With regard to this testimony, please answer the following questions:

- (a) Identify each instance in which Mr. Johnson overcharged Swing First, and for each such instance, provide the following information:
 - (i) The month and year the alleged overcharge occurred.
 - (ii) The amount Swing First was overcharged.
 - (iii) What steps Swing First took to rectify the overcharge, including identifying any written communications from Swing First to Johnson Utilities regarding the overcharge.
 - (iv) Did Johnson Utilities provide a credit to Swing First for the overcharge?
- (b) Provide a copy of any written communication identified in response to subpart (a)(iii) above.

JU 2.13 Please admit or deny that Johnson Utilities has supplied effluent to Swing First Golf, LLC.

JU 2.14 On page 4 of his Direct Testimony (line 26), David Ashton states: "Meter-reading has been erratic and billing has been a mess." With regard to this testimony, please describe each instance in which meter reading by Johnson Utilities "has been erratic and billing ... a mess."

JU 2.15 On pages 4-5 of his Direct Testimony (lines 26, 1), David Ashton states: "Utility attempted to illegally cut off my service." With regard to this testimony, please answer the following questions:

- (a) Provide the date of each instance where Johnson Utilities attempted to illegally cut off the service of Swing First Golf, and for each such instance, provide the following information:
 - (i) The account number of the Swing First Golf account that was affected.
 - (ii) A summary of the steps Swing First Golf took to address the matter.

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- (iii) Did Swing First Golf notify the Arizona Corporation Commission?
- (iv) Did Johnson Utilities cut off service?
- (v) Provide copies of all communications and documents which substantiate Swing First's claim that Johnson Utilities attempted to illegally cut off Swing First's service.

JU 2.16 On page 5 of his Direct Testimony (lines 1-3), David Ashton testifies: "Utility has also experienced mysterious pipe failures that allegedly prevented it from delivering irrigation water when it knew the water was especially needed." With regard to this testimony, please answer the following questions:

- (a) Identify each instance in which a pipe failure prevented irrigation water from being delivered to Swing First Golf, and for each such instance, provide the following information:
 - (i) The date the pipe failure occurred.
 - (ii) Who discovered the pipe failure?
 - (iii) Did Swing First Golf notify Johnson Utilities of the pipe failure?
 - (iv) If the answer to subpart (a)(iii) above is yes, the date and time that Swing First Golf notified Johnson Utilities of the pipe failure.
 - (v) How Swing First Golf was adversely affected by the pipe failure, including whether the stoppage of irrigation water caused damage to the Swing First Golf's golf course.
 - (vi) The duration of time that Swing First Golf was without irrigation water as a result of the pipe failure.
 - (vii) Did Johnson Utilities provide an explanation to Swing First Golf for the cause of the pipe failure.
 - (viii) Provide copies of any and all written communications or other documentation to substantiate each instance of a pipe failure.
- (b) Explain all circumstances which support Mr. Ashton's testimony that the pipe failures were "mysterious."

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- (c) Provide all facts supporting Mr. Ashton's testimony that Johnson Utilities knew when Swing First Golf "especially needed" water.

JU 2.17 On page 5 of his Direct Testimony (lines 3-4), David Ashton testifies: "During a rainy week in early 2008, Utility over-delivered effluent to the course, causing our lake to overflow and damaging the golf course." With regard to this statement, please provide the following information:

- (a) Quantify the amount of effluent that was "over-delivered" to Swing First Golf.
- (b) Describe the damage caused to the golf course as a result of the overflow.
- (c) Describe the dollar cost of the damage caused to the golf course as a result of the overflow.
- (d) Provide copies of any invoices to repair the damage to the golf course as a result of the overflow.

JU 2.18 On page 5 of his Direct Testimony (lines 19-22), David Ashton states that: "The contract also gives Utility the right to deliver water from other sources (wells or CAP-water) but provides that, if Utility exercises this right, it cannot charge more than the Commission-approved effluent rate." Please quote the specific language in the 1999 Agreement Regarding Utility Service which states that Johnson Utilities cannot charge Swing First Golf more than the Commission-approved effluent rate for irrigation water delivered to Swing First Golf.

JU 2.19 Is Johnson Utilities legally obligated to follow the tariffs which have been approved by the Arizona Corporation Commission?

JU 2.20 On page 7 of his Direct Testimony (lines 1-4), David Ashton states: "Based on discovery responses and my discussions with other customers, it appears that Utility is selling some effluent to other irrigation customers (at illegal rates), but is pumping most of the effluent it produces into the ground." With regard to this testimony, please answer the following questions:

- (a) Identify each discovery response which substantiates Mr. Ashton's testimony.
- (b) Identify each customer with whom Mr. Ashton has had discussions, as referenced in the testimony quoted above, and for each such customer, provide the following information:

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- (i) Was the customer an effluent customer of Johnson Utilities?
- (ii) Was the customer a CAP customer of Johnson Utilities?
- (iii) Did the customer tell Mr. Ashton that Johnson Utilities is charging illegal rates for effluent or CAP water? If so, what was the illegal rate that was being charged for water?
- (iv) Did the customer tell Mr. Ashton that Johnson Utilities is "pumping most of the effluent it produces into the ground?"
- (v) Did any person other than Mr. Ashton witness the discussion with the customer?
- (c) Identify each source of information upon which Mr. Ashton relies to support his testimony that Johnson Utilities is charging an "illegal rate" to "other irrigation customers." In response to this question, please provide all supporting documentation in the possession of Swing First Golf.
- (d) Identify each source of information upon which Mr. Ashton relies to support his testimony that Johnson Utilities "is pumping most of the effluent it produces into the ground." In response to this question, please provide all supporting documentation in the possession of Swing First Golf.

JU 2.21 On page 7 of his Direct Testimony (lines 8-9), David Ashton states: "But it appears that Utility is trying to create long-term storage credits." With regard to this testimony, please answer the following questions:

- (a) Describe Mr. Ashton's background and experience regarding long term storage credits for recharge of effluent.
- (b) Provide each and every basis supporting Mr. Ashton's statement that Johnson Utilities "is trying to create long-term storage credits."

JU 2.22 On page 8 of his Direct Testimony (lines 2-4), David Ashton states: "And doing that has brought a lot of negative consequences to me, my business and my family." With regard to this testimony, please answer the following questions:

- (a) Identify each and every negative consequence to Mr. Ashton. In responding to this question, provide any and all documentation to support this assertion.

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- (b) Identify each and every negative consequence to Mr. Ashton's business. In responding to this question, provide any and all documentation to support this assertion.
- (c) Identify each and every negative consequence to Mr. Ashton's family. In responding to this question, provide any and all documentation to support this assertion.

JU 2.23 On page 8 of his Direct Testimony (lines 7-8), David Ashton states: "When I realized Utility was in fact not following the law, I didn't know where to turn until I found the Commission." With regard to this testimony, please answer the following questions:

- (a) Identify each and every instance in which Swing First believes that Johnson Utilities has not followed the law, and for each such instance, provide the following information:
 - (i) The date the alleged violation of the law occurred.
 - (ii) The citation to the section of the Arizona Revised Statutes, the Arizona Administrative Code, the Johnson Utilities tariff, or the Arizona Corporation Commission decision that was implicated.
 - (iii) How Swing First Golf was adversely affected by the alleged violation.
 - (iv) What steps Swing First took to rectify the alleged violation.
 - (v) Provide any and all communications or documentation supporting Mr. Ashton's testimony.

JU 2.24 On page 8 of his Direct Testimony (lines 7-8), David Ashton states: "Utility's bills are regularly inaccurate, and this is a problem experienced by other of its business customers as well." With regard to this testimony, please answer the following questions:

- (a) Identify each and every instance in which Swing First Golf believes that a Johnson Utilities bill was inaccurate. In responding to the question, provide the following information:
 - (i) The date of the invoice that was inaccurate.

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- (ii) If Swing First Golf believes that it was overcharged under the invoice, what was the amount of the overcharge?
 - (iii) What steps did Swing First Golf take to address the alleged inaccurate bill with Johnson Utilities?
 - (iv) Did Johnson Utilities provide a credit to Swing First Golf for any alleged overcharge?
 - (v) Provide any and all communications or documentation supporting Mr. Ashton's testimony.
- (b) Identify each and every business customer referenced by Mr. Ashton who has received an inaccurate bill from Johnson Utilities. In responding to the question, provide the following information:
- (i) The date of the invoice that was inaccurate.
 - (ii) If there was an overcharge under the invoice, what was the amount of the overcharge?
 - (iii) What steps did the business customer take to address the alleged inaccurate bill with Johnson Utilities?
 - (iv) Did Johnson Utilities provide a credit to the business customer for any alleged overcharge?
 - (v) Provide any and all communications or documentation supporting Mr. Ashton's testimony.

JU 2.25 On page 8 of his Direct Testimony (lines 22-24), David Ashton states: "In 2007 Utility refused to deliver treated effluent and then charged me the \$3.75/1000 gallons potable water rate for the CAP-water it delivered." With regard to this testimony, please answer the following questions:

- (a) Provide the date or dates that Johnson Utilities refused to deliver treated effluent to Swing First Golf.
- (b) Provide any and all communications or documentation supporting Mr. Ashton's testimony.

JU 2.26 On page 8 of his Direct Testimony (lines 24-25), David Ashton states: "Utility now claims that it has corrected its multiple billing errors, but it's hard to have

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confidence in its calculations when you've had the experience I've had." With regard to this testimony, please answer the following questions:

- (a) Is Mr. Ashton alleging that Johnson Utilities has made billing errors that have not been corrected? In responding to the question, provide the following information:
 - (i) The date of any alleged billing error that has not been corrected by Johnson Utilities.
 - (ii) The amount of the alleged billing error.
 - (iii) What steps Swing First Golf has taken to address the billing error with Johnson Utilities.
 - (iv) Provide any and all communications or documentation supporting Mr. Ashton's testimony.

JU 2.27

On page 9 of his Direct Testimony (lines 1-3), David Ashton states: "But the thing that concerns me most is that Utility's own employees have personally told me that they don't bill according to the law, but according to what Mr. Johnson tells them to bill." With regard to this testimony, please answer the following questions:

- (a) Identify each employee of Johnson Utilities who told Mr. Ashton that Johnson Utilities does not bill according to the law, and for each such employee, provide the following information:
 - (i) The date of the communication by the Johnson Utilities employee.
 - (ii) Where the communication occurred (i.e., in Johnson Utilities' office, in Swing First Golf's office, by telephone, by e-mail, etc.).
 - (iii) The name of any person who was present and witnessed the communication.
- (b) Provide any and all communications or documentation supporting Mr. Ashton's testimony.

JU 2.28

On page 9 of his Direct Testimony (lines 3-6), David Ashton includes the following quotation: "Because George told us to change the rate in our computers, and when George tells you to do something, you do it." With regard to this testimony, please answer the following questions:

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- (a) Is this a direct quote from an employee of Johnson Utilities?
- (b) What employee of Johnson Utilities made this statement?
- (c) On what date did the employee make the statement?
- (a) Where the statement was made (*i.e.*, in Johnson Utilities' office, in Swing First Golf's office, by telephone, by e-mail, etc.)?
- (d) The name of any person who was present and witnessed the communications.

JU 2.29 Is it Swing First Golf's position that Johnson Utilities must retain a duplicate hard copy of each bill sent to a customer? If so, please answer the following questions:

- (a) What provision of Arizona law requires a public service corporation to retain a duplicate hard copy of a customer bill?
- (b) What public service corporations in Arizona retain a duplicate hard copy of customer bills?

JU 2.30 On page 9 of his Direct Testimony (lines 20-21), David Ashton states: "In my experience, Utility is more adept at knowing how to defraud its customers than at most other activities." With regard to this testimony, please answer the following questions:

- (a) Identify each incidence of which Swing First Golf is aware where Johnson Utilities has defrauded a customer, and for each such incidence, provide the following information:
 - (i) The name of the customer allegedly defrauded?
 - (ii) The date the alleged fraud took place?
 - (iii) Provide any and all documentation supporting Mr. Ashton's testimony.

JU 2.31 On page 10 of his Direct Testimony (lines 1-2), David Ashton states: "I was naïve and believed that Utility was following the law, so we did not keep a file of paid utility bills." With regard to this testimony, please answer the following questions:

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- (a) With regard to Mr. Ashton's statement that Johnson Utilities is not following the law, please provide the following information:
 - (i) The date the alleged violation of the law occurred.
 - (ii) The citation to the section of the Arizona Revised Statutes, the Arizona Administrative Code, the Johnson Utilities tariff, or the Arizona Corporation Commission decision that was implicated.
 - (iii) How Swing First Golf was adversely affected by the alleged violation.
 - (iv) What steps Swing First took to rectify the alleged violation.
 - (v) Provide any and all communications or documentation supporting Mr. Ashton's testimony.
- (b) Does Swing First Golf retain copies of bills from Johnson Utilities?
- (c) If the answer the subpart (b) above is yes, please provide copies of any such bills.
- (d) Does Swing First Golf retain copies of invoices from other utility service providers?
- (e) Does Swing First Golf have a policy (written or unwritten) regarding the retention of invoices? If so, please describe that policy?

JU 2.32 Does Swing First Golf have a record of the quantity of effluent delivered by Johnson Utilities from January 2005 to the present?

- (a) If the answer to this data request is yes, how much effluent has Johnson Utilities delivered to Swing First Golf by month for the period January 2005 through January 2009?

JU 2.33 Does Swing First Golf have a record of the quantity of CAP water delivered by Johnson Utilities from January 2005 to the present?

- (a) If the answer to this data request is yes, how much CAP water has Johnson Utilities delivered to Swing First Golf by month for the period January 2005 through January 2009?

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- JU 2.34 Does Swing First Golf report to the Arizona Department of Water Resources the amount of effluent and CAP water that it uses on its golf course?
- JU 2.35 Mr. Ashton, on page 10 of his Direct Testimony (line 12), testifies that Mr. Johnson's "actions have been illegal." With regard to this testimony, please provide the following information:
- (i) Describe the illegal action.
 - (ii) Provide the date of the alleged illegal action.
 - (iii) Provide the citation to the section of the Arizona Revised Statutes, the Arizona Administrative Code, the Johnson Utilities tariff, or the Arizona Corporation Commission decision that was implicated.
 - (iv) How Swing First Golf was adversely affected by the alleged illegal action.
 - (v) What steps Swing First took to rectify the alleged illegal action.
 - (vi) Provide any and all communications or documentation supporting Mr. Ashton's testimony.
- JU 2.36 On pages 10-11 of his Direct Testimony (lines 23-25, 1-5), David Ashton testified that he calculated that Johnson Utilities owes Swing First Golf more than \$70,000. Please provide the calculation of Mr. Ashton's number, and provide copies of his work papers.
- JU 2.37 On page 11 of his Direct Testimony (lines 11-21), David Ashton testified that he had an agreement with George Johnson whereby Mr. Johnson would agree to provide Swing First Golf with water credits of 150 million gallons per year in exchange for Swing First Golf managing the Golf Club at Oasis. Please provide any and all written communications and documents which support Mr. Ashton's testimony regarding an agreement.
- JU 2.38 On page 11 of his Direct Testimony (lines 19-21), David Ashton testified: "But because of our difficulties in dealing with Mr. Johnson, Swing First discontinued the Oasis management relationship on Nov 16, 2006, retroactive to October 31, 2006. With regard to this testimony, please answer the following questions:

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- (a) Identify each and every "difficulty in dealing with Mr. Johnson" that caused Swing First Golf to discontinue its alleged management relationship regarding the Golf Club at Oasis.
- (b) Mr. Ashton refers in his testimony to a "management relationship" as opposed to a contract or agreement. Is it Mr. Ashton's testimony that there is a difference between a management relationship and a contact or agreement?

JU 2.39 On page 13 of his Direct Testimony (lines 21-22), David Ashton states that he spoke with "another irrigation customer to discuss our issues to see if they had also been defrauded by Utility (they certainly felt that they had been, based solely on their own internal analysis of their bills)." With regard to this testimony, please answer the following questions:

- (a) Who is the irrigation customer referenced in Mr. Ashton's testimony?
- (b) What date did Mr. Ashton speak to the irrigation customer?
- (c) Describe the substance of the conversation between Mr. Ashton and the irrigation customer.
- (b) What information did Mr. Ashton communicate to the irrigation customer regarding Johnson Utilities?
- (c) The name of any person who was present and witnessed the communication between Mr. Ashton and the irrigation customer.

JU 2.40 On page 16 of Mr. Ashton's Direct Testimony (lines 3-4), Mr. Ashton refers to a "very competent groundskeeper."

- (a) Is this a groundskeeper for Swing First Golf?
- (b) What is the name of the groundskeeper?

JU 2.41 On page 16 of Mr. Ashton's Direct Testimony (lines 13-18), Mr. Ashton discusses an alleged discharge of raw sewage into a wash. With regard to this testimony, please answer the following questions:

- (a) Does Mr. Ashton have direct knowledge regarding the facts and circumstances of the alleged discharge?

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- (b) If the answer to subpart (a) above is yes, please describe how Mr. Ashton obtained his direct knowledge of the facts and circumstances of the sewage discharge.
- (c) Did the alleged discharge impact Swing First Golf's golf course? If so, please describe how the discharge impacted Swing First Golf's golf course.

JU 2.42 On page 16 of Mr. Ashton's Direct Testimony (lines 20-22), Mr. Ashton states that "George Johnson's Utility entered into a consent decree with ADEQ to clean and disinfect the wash." With regard to this testimony, please answer the following questions:

- (a) Does Mr. Ashton have direct knowledge regarding the facts and circumstances of the referenced consent decree?
- (b) If the answer to subpart (a) above is yes, please describe how Mr. Ashton obtained his direct knowledge of the facts and circumstances of the referenced consent decree.
- (c) Did the referenced consent decree involve Swing First Golf's golf course?
- (d) With regard to the newspaper article attached as Exhibit DA-4, how did Mr. Ashton obtain a copy of the article?

JU 2.43 On page 16 of Mr. Ashton's Direct Testimony (lines 1-17), Mr. Ashton quotes from a letter dated June 10, 2008, by then Commissioner William Mundell, a copy of which is attached as Exhibit DA-5 to Mr. Ashton's testimony. With regard to this letter, please answer the following questions:

- (a) Does Mr. Ashton have direct knowledge regarding the facts and circumstances of the referenced letter?
- (b) If the answer to subpart (a) above is yes, please describe how Mr. Ashton obtained his direct knowledge of the facts and circumstances of the referenced letter.
- (c) Did the referenced letter involve Swing First Golf's golf course?
- (d) How did Mr. Ashton obtain a copy of the letter?

JU 2.44 On page 17 of his Direct Testimony (lines 21-22), David Ashton testified: "Two residents organized a protest and posted pointed comments on a community web

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page. In retaliation, Utility sued the two residents for defamation.” With regard to this testimony, please answer the following questions:

- (a) Does Mr. Ashton have direct personal knowledge regarding the facts and circumstances that led to the filing of the referenced lawsuit?
- (b) If the answer to subpart (a) above is yes, please describe how Mr. Ashton obtained direct personal knowledge regarding the facts and circumstances that led to the filing of the referenced lawsuit.
- (c) Did Mr. Ashton read a copy of the complaint filed in the referenced lawsuit prior to the filing of his Direct Testimony in this rate case?
- (d) How did Mr. Ashton obtain a copy of the newspaper article attached as Exhibit DA-6 to his Direct Testimony?
- (e) Describe any steps taken by Mr. Ashton to independently verify any of the statements or information contained in the newspaper article attached as Exhibit DA-1 to his Direct Testimony.
- (f) Prior to the filing of his Direct Testimony, did Mr. Ashton speak to one or both of the residents referenced in his testimony?

JU 2.45

On page 18 of Mr. Ashton’s Direct Testimony (lines 12-16), Mr. Ashton testifies regarding the alleged illegal storage of sewage sludge by Johnson Utilities. With regard to this testimony, please answer the following questions:

- (a) Does Mr. Ashton have direct personal knowledge regarding the facts and circumstances of the alleged illegal disposal?
- (b) If the answer to subpart (a) above is yes, please describe how Mr. Ashton obtained his direct personal knowledge of the facts and circumstances of the alleged illegal disposal.
- (c) Did the alleged illegal disposal involve Swing First Golf’s golf course?
- (d) With regard to the newspaper article attached as Exhibit DA-7, how did Mr. Ashton obtain a copy of the article?
- (e) Describe any steps taken by Mr. Ashton to independently verify any of the statements or information contained in the newspaper article attached as Exhibit DA-7 to his Direct Testimony.

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- JU 2.46 On page 18 of Mr. Ashton's Direct Testimony (lines 21-23), Mr. Ashton testifies regarding an \$80,000 fine imposed against Johnson Utilities. With regard to this testimony, please answer the following questions:
- (a) Does Mr. Ashton have direct personal knowledge regarding the facts and circumstances of the fine?
 - (b) If the answer to subpart (a) above is yes, please describe how Mr. Ashton obtained his direct personal knowledge of the facts and circumstances of the fine.
 - (c) Did the events which resulted in the fine involve Swing First Golf's golf course?
 - (d) If the answer to subpart (c) above is yes, please describe how the events which resulted in the fine involved Swing First Golf's golf course.
- JU 2.47 On page 18 of Mr. Ashton's Direct Testimony (lines 23-26), Mr. Ashton testifies regarding an \$6,000 fine imposed against Johnson Utilities. With regard to this testimony, please answer the following questions:
- (a) Does Mr. Ashton have direct personal knowledge regarding the facts and circumstances of the fine?
 - (b) If the answer to subpart (a) above is yes, please describe how Mr. Ashton obtained his direct personal knowledge of the facts and circumstances of the fine.
 - (c) Did the events which resulted in the fine involve Swing First Golf's golf course?
 - (d) If the answer to subpart (c) above is yes, please describe how the events which resulted in the fine involved Swing First Golf's golf course.
- JU 2.48 On page 19 of Mr. Ashton's Direct Testimony (lines 1-3), Mr. Ashton testifies regarding an \$90,000 fine imposed against Johnson Utilities. With regard to this testimony, please answer the following questions:
- (a) Does Mr. Ashton have direct personal knowledge regarding the facts and circumstances of the fine?

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- (b) If the answer to subpart (a) above is yes, please describe how Mr. Ashton obtained his direct personal knowledge of the facts and circumstances of the fine.
- (c) Did the events which resulted in the fine involve Swing First Golf's golf course?
- (d) If the answer to subpart (c) above is yes, please describe how the events which resulted in the fine involved Swing First Golf's golf course.

JU 2.49

On page 20 of his Direct Testimony (lines 17-19), David Ashton states: "Based on my business training and experience, it would be pretty unusual for earnings at a utility to swing radically from year to year once the company's services is well-established." With regard to this testimony, please answer the following questions:

- (a) Explain any and all business experience that Mr. Ashton has in public utility accounting and rate-setting.
- (b) Identify each utility company for which Mr. Ashton has reviewed the utility's earnings.
- (c) Is Mr. Ashton a certified public accountant?
- (d) Based on Mr. Ashton's business training and experience, does he have any direct personal knowledge as to how a public utility sets initial rates during its start-up period?
- (e) Based on Mr. Ashton's business training experience, please describe the Arizona Corporation Commission's policy regarding establishing initial rates and charges for start-up water companies.

JU 2.50

On page 22 of his Direct Testimony (lines 13-14), David Ashton states: "Johnson Utilities should not be allowed to increase its rates until its management and financial practices are investigated." With regard to this testimony, please answer the following questions:

- (a) Provide legal citations (including Arizona Corporation Commission decisions or court cases) to any case where the Arizona Corporation Commission has prohibited a rate increase from becoming effective until a utility's management and financial practices have been investigated.

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- (b) Is one purpose of a rate case to investigate the management and financial practices of a utility?
- (c) Please identify the specific management and financial practices of Johnson Utilities that should be investigated.

JU 2.51

On page 22 of his Direct Testimony (lines 15-16), David Ashton states: "Johnson Utilities should be required to immediately reduce its water rates and refund its overcharges for the last two years." With regard to this testimony, please answer the following questions:

- (a) Provide legal citations (including statutes, rules, Arizona Corporation Commission decisions or court cases) to any authority which would permit the Arizona Corporation Commission to order Johnson Utilities "to immediately reduce its water rates and refund its overcharges for the last two years."
- (b) By "overcharges" does Mr. Ashton mean that Johnson Utilities was over-earning its authorized rate of return? If so, what is Johnson Utilities authorized rate of return?
- (c) By "immediately reduce its water rates" does Mr. Ashton mean that Johnson Utilities should reduce its water rates prior to the completion of this rate case? If so, please provide legal authority to support the unilateral lowering of a utility's water rates without an order of the Arizona Corporation Commission.
- (d) Provide copies of all work papers and analyses performed by Mr. Ashton to support his testimony that Johnson Utilities has overcharged its customers during the last two years.

JU 2.52

On page 22 of his Direct Testimony (lines 19-20), David Ashton states: "Johnson Utilities' Pecan wastewater treatment plant should not be included in rate base." With regard to this testimony, please answer the following questions:

- (a) Identify any qualifications of Mr. Ashton which would allow him to competently testify as a rate base expert witness in this case.
- (b) What is the basis for excluding the Pecan wastewater treatment plant from rate base?

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- JU 2.53 On page 22 of his Direct Testimony (lines 21-23), David Ashton states: "Johnson Utilities should be required to dismiss all defamation lawsuits against its customers, pay all of their court costs and legal fees, and apologize to each customer." With regard to this testimony, please answer the following questions:
- (a) Provide legal citations (including statutes, rules, Arizona Corporation Commission decisions or court cases) to any authority which would permit the Arizona Corporation Commission to order Johnson Utilities to dismiss a pending lawsuits.
 - (b) Provide legal citations (including statutes, rules, Arizona Corporation Commission decisions or court cases) to any authority which would permit the Arizona Corporation Commission to order Johnson Utilities to pay another party's legal fees.
 - (c) Provide legal citations (including statutes, rules, Arizona Corporation Commission decisions or court cases) to any authority which would permit the Arizona Corporation Commission to order Johnson Utilities to apologize to a person.
- JU 2.54 On page 22 of his Direct Testimony (line 26), David Ashton states: "Johnson Utilities should be penalized with a reduction in return on equity." With regard to this testimony, please answer the following questions:
- (a) Please identify any qualifications of Mr. Ashton which would allow him to competently testify as a return on equity or cost of capital expert in this case.
 - (b) Provide legal citations (including statutes, rules, Arizona Corporation Commission decisions or court cases) to any authority which would permit the Arizona Corporation Commission to penalize a utility with a reduction in return on equity.
 - (c) Provide copies of all work papers and analyses performed by Mr. Ashton regarding Johnson Utilities' return on equity.
- JU 2.55 On page 23 of his Direct Testimony (lines 2-3), David Ashton states that "the commission should require Johnson Utilities to demonstrate why it should not surrender its certificate of convenience and necessity." With regard to this testimony, please answer the following questions:

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- (a) Provide legal citations (including statutes, rules, Arizona Corporation Commission decisions or court cases) to any authority which would permit the Arizona Corporation Commission to order the deletion of Johnson Utilities' certificate of convenience and necessity ("CC&N") in this rate case proceeding.
- (b) Has this rate case proceeding been noticed as a CC&N deletion proceeding?
- (c) What is the legal standard in Arizona for deleting the CC&N of a public service corporation?
- (d) Please reconcile Mr. Ashton's testimony with A.R.S. § 40-252.